

playing a first wagering game segment whose game outcome depends at least in part upon chance;

comparing a first segment game outcome to the rules of the game to determine if a payout is a winning outcome;

playing a second wagering game segment whose outcome is based at least in part on chance without placing further wagers in addition to the wager comprising at least one part; and

comparing the outcome of the second segment game to the rules of the game to identify whether the outcome is a winning outcome; and

awarding the player a separate payout for winning outcomes of the first wagering segment game and winning outcomes of the second wagering segment game, and where there are consecutive winning outcomes for the first wagering segment game and the second wagering segment game, awarding the player a third payout without placing further wagers in addition to the wager comprising at least one part.

### **REMARKS CONCERNING THE AMENDMENTS**

The above amendments have been made in an effort to more clearly describe the present invention. Antecedent basis for the amendments may be found generally in the specification and, for example, as follows:

- 1) placing only the first wager, yet having the capability of playing the second game – Page 20, lines 3-27).

### **SUMMARY OF THE REJECTIONS**

**Claims 20-26 have been rejected under 35 U.S.C. 102(b) as anticipated by Netley or Ornstein.**

#### **The Rejection under 35 U.S.C. 102(b) over Netley**

The rejection asserts that Netley shows a method of playing a poker game comprising the steps of wagering for each game (column 3, lines 13-14), playing at least two games (abstract),

being allowed to play a second game if the player wins the first game (column 2, lines 65-67), awards being available for each of the two hands (column 3, lines 27-31) and a bonus (column 5, line 39). This rejection is respectfully traversed.

Claim 20 originally described the placement of a first wager and did not require the placement of further wagers or placing winnings at risk to play the second game. That fact has been further clarified in the claims. Netley requires that a second wager be placed after winning the first hand, which includes putting a portion of the winnings from the first hand at risk. Netley does not teach the placement of an at least first bet and then providing the player with the opportunity (not merely the option which must be exercised by an additional wager)

“...to play a second game of poker without placing further wagers;...”

That is a substantively different format of play recited in the claims than is taught by Netley. This limitation means that after the at least first wager (this term allows a single wager, a double wager on the first and second game, and a triple wager on the first, second and bonus play), the player may play the second game without being able to place another wager. Netley appears to require the placing of a second wager (either as a separate bet or as part of the original winning payout in the play of the first game) after winning the play of the first game. This step of Netley is excluded by the recitation of claim 20. Therefore the rejection of claims 20-26 under 35 U.S.C. 102(b) over Netley is clearly in error.

#### **The Rejection under 35 U.S.C. 102(b) over Ornstein**

Ornstein fails to anticipate the present invention. The present claims 20-26 require (through limitation e) in claim 20) that:

- e) “...if the player attains a hand in the second game of poker that also exceeds said predetermined rank, **a payout is achieved for a) the rank of the first poker hand, b) the rank of the second poker hand, and c) the occurrence of both the first poker hand and the second poker hand exceeding a specific rank.**

Ornstein pays for winning the first hand and then pays a bonus for winning the consecutive number of games wagered upon. There is no payoff merely for winning a second game on an original wager. As with Netley, Ornstein specifically states that subsequent game wagers are

placed at the start of each game, after conclusion (and winning) of the first game. Note especially claim 1, and in particular, step (i) in which step (b) ("...the player making a conventional bet of a denomination within the denomination range permitted by rules of the game...") is repeated after winning the first hand. This requires that a new wager be placed on the basic game after each win. This is specifically excluded from play of the present game, as noted above in the discussion with respect to Netley.

Additionally, there is no specific disclosure of the method of play by Ornstein in a poker variant of the game. There is therefore no basis for anticipation of the limitation regarding awarding wins on the basis of predetermined ranks of poker hands. That teaching is absent from Ornstein, and therefore Ornstein cannot anticipate claims 20-26.

The rejection of claims 20-26 under 35 U.S.C. 102(b) over both Netley and Ornstein is clearly in error and must be withdrawn.

**Claims 1-19 and 27-30 have been rejected under 35 U.S.C. 103(a) as unpatentable over Moody in view of Ornstein.**

In addition to the fatal defects noted above with respect to Ornstein alone, Moody adds even further differences from the present invention so that even if the references are combined, they do not provide teachings of the present invention.

To begin with, Moody does not teach consecutive games in which play of second, third, etc. games are dependent upon the winning of a first hand. Moody teaches the play of multiple games simultaneously. Note column 1, lines 29-42 where cards are duplicated among contemporaneously disclosed hands, cards are dealt to multiple rows on the screen, and players are independently paid for individual winning hands. The underlying concept of Moody is quite different from that recited in the present claims.

Combining Moody with Ornstein severely changes the play of Moody, yet no direction or motivation is provided to change that game to the type of game recited in the claims of this Application. As noted above, Ornstein does not teach the placement of at least a single wager at the beginning of the game that is used with regard to initial game play, second game play, and bonus payouts. It is therefore unreasonable to assume that the combination of Moody and Ornstein can establish as obvious that method of game play. This is particularly the case where,

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as here, Moody does not even show consecutive games, play of games dependent upon success with previous games, and the award of bonuses for consecutive play. As Moody fails to show these features (even though Ornstein does show bonuses for multiple wins), it is impossible for Moody to overcome the deficiencies noted in the discussion of Ornstein. The combination of references fails to teach the invention as claimed.

It is to be noted that even though claims 1 and 15 were not amended as was claim 20, claims 1 and 15 specifically describe play as including:

“..resolving the at least one bet with respect to whether a) the first set of symbols and the second set of symbols exceed a minimum rank in the payout table; b) the second set of symbols exceeds a minimum rank in the payout table; and c) first set of symbols and the second set of symbols exceed a minimum rank in the payout table.”

*(emphasis added)*

This limitation requires that the at least first wager placed before receiving all of the first set of symbols is resolved with respect to play of the second set of symbols and the relative rank of both hands.

It is clear that this rejection is in error and that all rejections should be withdrawn and all claims should be allowed.

**CONCLUSION**

All claims under prosecution are in condition for allowance.

The Examiner is invited to telephone Applicant's below-listed representative at (952) 832.9090 to facilitate prosecution of this application. Respectfully submitted,

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Date *8 June 2001*

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Assistant Commissioner of Patents, Washington, D.C. 20231 on **June 8, 2001**.

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